

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6113 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MEHBUBKHAN SARDARKHAN PATHAN

Versus

COMMISSIONER OF POLICE

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Appearance:

MR ANIL S DAVE for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 11/02/99

ORAL JUDGEMENT

The petitioner challenges the order of his detention passed on 19th July, 1998 at Annexure "A" to the petition, by the Police Commissioner of City of Ahmedabad, under Section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985. Under that order, it was stated that the said authority was satisfied with respect to the petitioner that it was necessary to direct

his detention with a view to prevent him from engaging in any activity which is likely to affect adversely the maintenance of public order. The grounds on which the order was made, were supplied to the petitioner alongwith the order and they are on record at Annexure "C" to the petition. The Commissioner of Police in his affidavit has stated that he has carefully examined and considered the documentary evidence and the veracity of the statements made by the witnesses and prepared these grounds of detention. It is stated that the detenu was a 'bootlegger' within the meaning of Section 2(b) of the Act and from the evidence of witnesses, it was disclosed that he was disturbing public order in order to run his activities of selling liquor. It is stated that such activities of dealing in liquor create a possibility of hooch tragedies, which cause public harm.

2. It appears from the grounds which have been supplied to the petitioner that the relevant papers, as mentioned therein, were also supplied to him.

In the grounds for detention, there is reference to one prohibition offence having been registered against the petitioner in respect of 366 bottles of foreign liquor and 72 other bottles, for which an offence under Section 66(1)(b), 65(a)(e), 81 and 83 of the Bombay Prohibition Act was registered at Crime Register No. 5001/98 on 2.1.1998. There is reference to two incidents which are said to be involving the petitioner and which had connection with his activities, with a view to suggest that his activities were adversely affecting the maintenance of public order. Firstly, there is reference to an incident of 10.6.1996, which is alleged to have occurred in the morning at 8'0 Clock on Dudheshwar road near Kalpanabhumii Estate. It is alleged that the petitioner had at that time approached the witness suspecting him to be watching his activities and with the help of an accomplice, beaten him and threatened him with a razor and when people had gathered, he had threatened them also with the razor and they had run away. This had created panic in that area. There is then reference to an incident that is said to have occurred on 17.6.1998 in the evening at about 7'0 Clock opposite Ahmedhussain Chawl in Dudheshwar area, in respect of which it is alleged that the petitioner had approached alongwith his two accomplices, the witness who was standing there with his vehicle and asked for the vehicle for transporting foreign liquor and beer. On the witness refusing to allow the vehicle to be used for the purpose, the petitioner got enraged and with the help of his companions, dragged this witness out of his vehicle and

assaulted him in public, as a result of which the people gathered. The petitioner threatened the witness by a knife and also threatened the people who had gathered, as a result of which, there was panic and since the people started running about, there was a traffic jam. It was also stated in the grounds at Annexure "C" that since the petitioner was a fierce and strong headed person and was assaulting innocent people residing in the area where he was indulging in his bootlegging activities, no one was prepared to file a complaint against him and the witnesses had requested to keep their identity as a secret. The authority had found substance in their request and therefore, their identity was not disclosed since it was otherwise against public interest to do so as contemplated by the provisions of Section 9(2) of the Act.

3. In the background of these facts, the learned Counsel appearing for the petitioner contended that there was nothing in the order to indicate that the activity of the petitioner was affecting maintenance of public order. It was submitted that mere law and order problem or commission of an offence would not be the same thing as affecting public order. It was argued that merely because the petitioner was alleged to be a bootlegger, the activity of being a bootlegger would not per-se amount to an activity which affects adversely the maintenance of public order. It was contended that the deeming fiction under sub-section (4) of Section (3) was not attracted because it was not shown that the activity alleged would have adversely affected the maintenance of public order. Reliance was placed in support of this contention on the decision of the Supreme Court in Piyush Kantilal Vs. Commissioner of Police, Ahmedabad, reported in AIR 1989 S.C 491, in which the Hon'ble Supreme Court has held that merely because a detenu is a bootlegger, he cannot be preventively detained under the provisions of the said Act, unless as laid down under sub-section (4) of Section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. It was also pointed out from the decision of Piyush's case (supra) in which also incidents of beating by the detenu had taken place as alleged by the witnesses, whose names were not disclosed, that such offences or the allegations (by the witnesses that they were beaten) cannot be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the maintenance of public order. Reference was also made to the decision of the Supreme Court in Omprakash Vs. Commissioner of Police, reported in 31(2) GLR 730, in

which the ratio of Piyush Kantilal's case was reiterated.

4. The learned Assistant Government Pleader argued that there was a statutory presumption to be raised in case of activities of 'bootlegger' or 'dangerous person' or 'drug offender' or 'immoral traffic offender' or 'property grabber' that such person is deemed to be acting in a manner prejudicial to the maintenance of public order.

5. The grounds which were supplied to the petitioner only disclose that there was one prohibition case pending against the petitioner and that on two occasions the petitioner had man-handled two witnesses, who are said to have been given statements against him. No offence seem to have been registered in respect of those two incidents. The incidents which are referred to revolve around an allegation that the petitioner had assaulted those witnesses and threatened them in one case with a razor and in the other with a knife. There is a common factor in those incidents as per which the petitioner is alleged to have also threatened the public that has gathered, which allegation is of a general nature with a view to indicate that public order was being affected. No attempt seems to have been made to examine any members of the public, who, according to the witnesses, had gathered in the locality. As held by the Supreme Court in the case of Pushkar Mukherjee's Vs. State of West Bengal, reported in AIR 1970 S.C. 852, every act of assault or injuries to specific persons does not lead to public disorder when two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder, observed the Supreme Court. The contravention of any law before it can be said to affect public order, must affect the community or the public at large. On considering the nature of allegations said to have been made by the two witnesses which are referred to in the grounds supplied to the petitioner, it cannot be said that the petitioner had committed an act giving rise to the maintenance of public order.

6. The contention of the learned Assistant Government Pleader that a presumption arises in case of bootleggers by virtue of sub-section (4) of Section 3 of the Act that they are acting in a manner prejudicial to the maintenance of public order, cannot be countenanced in view of the ratio of the decision of the Supreme Court in Piyush Kantilal's case, which has been reiterated in subsequent cases. Explanation to sub-section (4) of Section 3 lays down that for the purposes of sub-section

(4), public order shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely, inter alia if any of the activities of any person referred to in sub-section (4) of Section 3 of the Act directly or indirectly is causing or likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. It was contended that selling illicit liquor was likely to affect adversely public health and therefore, even under the explanation a deeming fiction arises to show that the public order was adversely affected. In Piyush Kantilal's case, the Supreme Court while construing sub-section (4) of Section 3 of the Act, held as under:-

"Sub-section (4) of Section 3 contains a deeming provision. Under sub-section (4), a bootlegger or a dangerous person or a drug offender shall be deemed to be acting in a manner prejudicial to the maintenance of public order when the activities of such a person affect adversely or are likely to affect adversely the maintenance of public order. In other words, although sub-section (4) contains a deeming provision, such deeming provision will not be attracted unless the activities of the person concerned affect adversely or are likely to affect adversely the maintenance of public order."

It is thus, clear that as has held by the Supreme Court, the deeming fiction under sub-section (4) of Section 3 of the Act will not apply unless the activities which are alleged affect or are likely to affect adversely the maintenance of public order. In view of this clear ratio there is no scope for considering the contention which was sought to be raised by the learned Assistant Government Pleader that the last phrase occurring in sub-section (4) namely "which affect adversely or are likely to affect adversely the maintenance of public order" has reference to the activities which are covered by sub-section (1) of Section 3, namely the activities of a person which are "in any manner prejudicial to the maintenance of public order" and that from the broad description of the activities, the particular activities of bootlegger, dangerous person, drug offender, immoral traffic offender or property grabber are deemed to be activities which are prejudicial to the maintenance of public order or that the deeming fiction would be redundant if an enquiry as to the activity adversely affecting maintenance of public order is to precede even in case of such specified

category of persons.

6. In view of what is stated above, the impugned order of detention dated 19.7.98, which is at Annexure "A" to the petition, cannot be sustained and is hereby set aside and the detenu is ordered to be set at liberty forthwith unless required in connection with any other offence. Rule is made absolute accordingly.

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\*/Mohandas